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VIA OVERNIGHT DELIVERY

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street SW
Washington, DC 20024

August 20, 2012

ENTERED
Office of Proceedings

AUG 21 2012

Part of
Public Record

Re: Diana Del Grosso, et al – Petition for Declaratory Order
STB Finance Docket No. 35652

Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of the Motion of Named Dana Companies to Dismiss for Lack of Jurisdiction. Please time stamp the extra copy of this letter and return it to me in the stamped, self-addressed letter provided for your convenience.

Please let me know if there are any questions about this Motion. Thank you for your assistance.

Respectfully,

Eric M. Hocky

EMH/e

cc: Mark Bobrowski

Philadelphia

Philadelphia

Washington

Washington

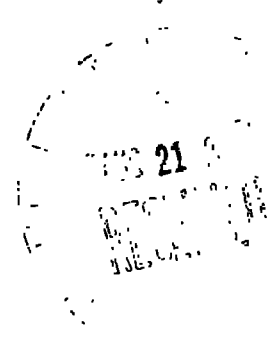
Princeton

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Before the
SURFACE TRANSPORTATION BOARD

Finance Docket No. 35652



**DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH,
CHERYL HATCH, KATHLEEN KELLY, ANDREW
WILKLUND, AND RICHARD KOSIBA--
PETITION FOR DECLARATORY ORDER**

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**MOTION OF NAMED DANA COMPANIES
TO DISMISS FOR LACK OF JURISDICTION**

ERIC M. HOCKY
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Dated: August 20, 2012

Attorneys for named Dana Companies

BEFORE THE
SURFACE TRANSPORTATION BOARD

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**DIANA DEL GROSSO, RAY SMITH, JOSEPH HATCH,
CHERYL HATCH, KATHLEEN KELLY, ANDREW
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PETITION FOR DECLARATORY ORDER**

**MOTION OF NAMED DANA COMPANIES
TO DISMISS FOR LACK OF JURISDICTION**

On August 1, 2012, the seven individual named petitioners ("Petitioners") filed a Petition for Declaratory Order, seeking a determination that transload services being performed at a railyard of the Grafton & Upton Railroad Co. ("G&U") located in Upton Massachusetts are not preempted from local regulation. The Petition identifies certain entities as "Dana Companies,"¹ and a copy of the Petition was served on the Dana Companies. Together with the Petition, Petitioners also purported to serve discovery on the Dana Companies. Petition, Exhibit A.

The Dana Companies is not is a separate legal entity. The Dana Companies are a group of companies, including the named companies, involved primarily with the provision of motor carrier transportation, equipment leasing and logistics services. One of the Dana Companies, GU Railcare, was formed specifically and solely for the purposes of providing transloading services for G&U at the Upton railyard. For convenience, the named Dana Companies will be referred to herein as the "Dana Companies" except where individual identification of a company is relevant.

¹ The named Dana Companies are Grafton Upton Railcare, LLC ("GU Railcare"), Dana Transport, Inc., Dana Rail Care, Liquid Transport Company, International Equipment Leasing, Inc., and Suttles Truck Leasing, LLC. See Petition, Vol. 1, ¶¶ 9 – 14. Dana Rail Care is not a separate legal entity; rather it is a trade name of Dana Container, Inc.

The filing of a petition for a declaratory order does not require a response, and unless an entity chooses to participate as a party, the only parties are the petitioners. While service of a petition on potentially affected entities provides notice of requested action, the mere receipt of service does not make those entities a party in the proceeding. While the Board may be able to require a rail carrier subject to its jurisdiction to participate and respond to a petition for declaratory order, it cannot do so with respect to entities that are not subject to its jurisdiction.

G&U is a short line common carrier railroad subject to the jurisdiction of the Board, and it will be filing a reply to the Petition. However, while GU Railcare performs transload services for and on behalf of G&U at the Upton railyard, none of the Dana Companies, including GU Railcare, is a common carrier railroad. As such none of the Dana Companies is subject to the jurisdiction of the Board. *See* 49 U.S.C. §10501(a). The Dana Companies do not voluntarily consent to subject themselves to the jurisdiction of the Board, nor do they consent to being considered parties in any proceeding that might be commenced by the Board.

GU Railcare and the other Dana Companies have provided to G&U, verified statements as fact witnesses to be used in support of G&U's reply to the Petition. GU Railcare and the other Dana Companies agree with the arguments set forth in the reply being filed by G&U that there is no controversy for the Board to address, and further that all of the transload services provided by GU Railcare as a contractor and agent for G&U, are preempted from local regulation.

For the foregoing reasons, the Dana Companies request that, if the Board determines to commence a proceeding as a result of this Petition, that the Board dismiss them for lack of jurisdiction, or otherwise make clear that the Dana Companies are not parties to the proceeding.

Respectfully submitted,



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Dated: August 20, 2012

Attorneys for named Dana Companies

CERTIFICATE OF SERVICE

I hereby certify that on this date a copy of the foregoing document was served on the following person by overnight delivery:

Mark Bobrowski
Blatman, Bobrowski & Mead, LLC
9 Damonmill Square, Suite 4A4
Concord, MA 01742



Eric M. Hocky

Dated: August 20, 2012

VERIFICATION

I, Ronald Dana, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Motion.

Executed on August 20, 2012



Ronald Dana

Kathleen M. Murphy
Notary Public

KATHLEEN M. MURPHY
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Mar. 25, 2015

VERIFICATION

I, Michael J. Polselli, verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Motion.

Executed on August 20, 2012


Michael J. Polselli

My Commission Expires 2/11/16

